

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

RICKY LOVEJOY,  
Petitioner

vs.

MARK CAPOZZA, *et al.*  
Respondents

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: CIVIL NO. 3:CV-13-2014  
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: (Judge Caldwell)  
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*M E M O R A N D U M*

In a memorandum dated September 18, 2013, we decided that this pro se petition under 28 U.S.C. § 2254 was time-barred but granted Petitioner an opportunity to show that it was timely under equitable-tolling principles. *See Lovejoy v. Capozza*, 2013 WL 5295646 (M.D. Pa.).<sup>1</sup>

In response, on December 6, 2013, Petitioner filed a brief (Doc. 10) arguing why equitable principles render his petition timely. We have carefully reviewed that brief and conclude that Petitioner's arguments are insufficient. Essentially, Petitioner has not shown that he is entitled to equitable tolling during the relevant time period or that he exercised due diligence. The petition will therefore be dismissed as untimely.

We will also deny a certificate of appealability. However, Petitioner is advised that he has the right for thirty (30) days to appeal our order denying his 2254 petition, see 28 U.S.C. § 2253(a); Fed. R. App. P. 4(a)(1)(A), and that our denial of a

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<sup>1</sup> This petition was originally part of a civil-rights action filed on June 1, 2012. *Lovejoy v. Commonwealth of Pennsylvania*, No. 12-CV-1037 (M.D. Pa.).

certificate of appealability does not prevent him from doing so, as long as he also seeks a certificate of appealability from the court of appeals. See Federal Rule of Appellate Procedure 22; Local Rule of Appellate Procedure 22.1.

We will issue an appropriate order.

/s/William W. Caldwell  
William W. Caldwell  
United States District Judge

Date: January 27, 2014